



Attorney General of New Mexico

GARY K. KING

Attorney General

ALBERT J. LAMA

Chief Deputy Attorney General

February 28, 2012

The Honorable Tom McClintock, Chairman
Subcommittee on Water and Power
House Committee on Natural Resources
1522 Longworth House Office Building
Washington, DC 20515

The Honorable Grace Napolitano, Ranking Member
Subcommittee on Water and Power
House Committee on Natural Resources
H2-186 Longworth House Office Building
Washington, DC 20515

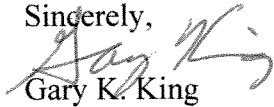
Dear Chairman McClintock and Ranking Member Napolitano,

As Attorney General of New Mexico, I am writing to express my concern about and opposition to H.R. 1837, the San Joaquin Water Reliability Act. Specifically, provisions of H.R. 1837 would set aside Section 8 of the Reclamation Act of 1902 and effectively preempt state water law in California. To do so would set a precedent with far-reaching negative repercussions across the western United States.

For more than a century, Congress has purposefully deferred to state water law. As the United States Supreme Court has stated, this deference reaches back at least as far as the Desert Land Act of 1877 "following the act of 1877 if not before, all non-navigable waters then a part of the public domain became *publici juris*, subject to the plenary control of the designated states, including those since created out of the territories named." *California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142 (1935). This deference to state water law continued through enactment of Section 8 of the Reclamation Act of 1902 which itself has been settled law for more than a century. The policy of cooperative federalism in Reclamation Law is a critical part of the foundation upon which western society was built and upon which its continued health depends.

As the Western States Water Council said to you in its August 1, 2011 letter regarding H.R. 1837 "the States are responsible for allocating and administering rights to the use of water for myriad uses; and are in the best position to identify, evaluate and prioritize their own needs." In New Mexico, we daily face the challenge of water resource management for environmental, agricultural, municipal and industrial needs. Section 8 of the Reclamation Act provides the stability and certainty necessary to meet those challenges. For these reasons, H.R. 1837 should not be enacted.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gary K. King", is written over the typed name.

Gary K. King

Attorney General of New Mexico

Cc: Honorable Martin Heinrich
Honorable Ben Ray Lujan
Honorable Steven Pierce